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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,834	01/29/2004	Paul A. Mueller	FFRZ 2 00237	5638
27885	7590	11/01/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			HOGE, GARY CHAPMAN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/767,834	Applicant(s) MUELLER ET AL.	
	Examiner Gary C. Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 35-46 is/are pending in the application.
- 4a) Of the above claim(s) 1-6, 40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-29 and 35-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-6, 40 and 41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 11, 2005.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "said ridge."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 7, 9, 10, 16, 28, 29, 35, 38, 39, 42 and 43 are rejected under 35 U.S.C. 102(e) as being anticipated by Fast et al. (6,868,629).

Regarding claims 7, 28 and 29, see Fig. 2. Fast discloses a label holder comprising a body panel **16** having a front surface, a rear surface, an upper end, and a lower end; a first clip member **32** extending away from the rear surface; a second clip member extending away from the rear surface, the second clip member being spaced from the first clip member, wherein the second clip member includes a stem **72**; an upwardly extending arm **70a** located adjacent a distal end of the stem; and, a downwardly extending arm **70b** disposed adjacent the distal end of the stem; and, a cover panel **60** connected to the body panel, the cover panel having a front surface, a rear surface, an upper end, and a lower end. Because this is a subcombination claim directed to a label holder, and not a combination claim directed to a label holder and a shelf, the recitation that the first and the second clip members cooperate to selectively hold a projecting portion of an associated shelf is considered to be a functional recitation and a statement of intended use.

Regarding claim 28, Fast discloses a sign gripping member **50**.

Regarding claims 16, 42 and 43, see Fig. 2. Fast discloses a holder for a label, the holder comprising a cover panel **60** having a front surface, a rear surface, an upper end, and a lower end; a body panel **16** having a front surface, a rear surface, an upper end, and a lower end; a clip **32** extending away from the body panel rear surface; a hinge **20** connecting the lower end of the cover panel with the lower end of the body panel, a first sign holder **50** mounted to the cover panel, and, a second sign holder **52** mounted to the cover panel.

6. Claims 7-15, 29, 35 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Brinkman (5,899,011).

See Fig. 4. Brinkman discloses a label holder comprising a body panel **14** having a front surface, a rear surface, an upper end, and a lower end; a first clip member **70** extending away

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from the rear surface; a second clip member 60 extending away from the rear surface, the second clip member being spaced from the first clip member, wherein the second clip member includes a stem 62; an upwardly extending arm 67 located adjacent a distal end of the stem; and, a downwardly extending arm 130 disposed adjacent the distal end of the stem; and, a cover panel 20 connected to the body panel, the cover panel having a front surface, a rear surface, an upper end, and a lower end; the first and the second clip members cooperate to selectively hold a projecting portion 56 of an associated shelf.

Regarding claim 11, a portion 68 of the upwardly extending arm extends toward the rear surface of the body panel 14.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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9. Claims 17-21 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fast et al. (6,868,629) in view of Thompson (4,557,064).

Fast discloses the invention substantially as claimed, as set forth above. However, the first sign holder does not include flexible fins. Thompson teaches that it was known in the art to provide such a holder with flexible fins in order to hold the sign more securely. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sign holder disclosed by Fast with flexible fins, as taught by Thompson, in order to hold the sign more securely.

Regarding claims 20 and 46, the lower-most fin on the cover panel constitutes a ridge.

10. Claims 16-21, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kump et al. (6,026,603) in view of Greenberger (4,373,693).

Kump discloses a holder for a label, the holder comprising a cover panel **28** having a front surface, a rear surface, an upper end, and a lower end; a body panel **20** having a front surface, a rear surface, an upper end, and a lower end; a clip **18** extending away from the body panel rear surface; a hinge **26** connecting the lower end of the cover panel with the lower end of the body panel, and a first sign holder **52** mounted to the cover panel. The first sign holder is designed to hold card-shaped objects. However, Klump does not disclose a second sign holder. Greenberger teaches that it was known to attach a sign holder to a card-shaped object. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach a sign holder of the type taught by Greenberger to the label holder disclosed by Kump, in order to display a large, attention-getting sign to the label holder.

Regarding claim 20, the lower-most fin on the first sign holder constitutes a ridge.

11. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kump et al. (6,026,603) in view of Greenberger (4,373,693) as applied to claim 17 above, and further in view of Gray (D453,798).

Kump, as modified by Greenberger, discloses the invention substantially as claimed, as set forth above. However, the clip structure disclosed by Greenberger includes a single protrusion that interacts with a single recess, rather than a series of opposing flexible fins. Gray teaches that a series of opposing flexible fins was a functionally equivalent support structure known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a series of opposing flexible fins, as taught by Gray, in the second sign holder as a matter of choice in design and in order to grip a plurality of discrete locations on the sign and thereby grip the sign more securely.

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kump et al. (6,026,603) in view of Greenberger (4,373,693) and Gray (D453,798) as applied to claim 24 above, and further in view of Thompson (4,557,064).

Kump, as modified, discloses the invention substantially as claimed, as set forth above. However, the reference to Gray is a design patent, and therefore it is not known whether the fins are made of a more flexible material than the two side walls. However, Thompson teaches (col. 2, lines 64-68) that it was known in the art to make such fins softer than the side walls to which they are attached. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fins disclosed by Gray of a softer material than the side walls to which they are attached, as taught by Thompson, in order that they may bend with sufficient ease to grasp a sign placed therein.

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13. Claims 28 and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinkman (5,899,011) in view of Kump et al. (6,026,603).

See Fig. 4. Brinkman discloses a label holder comprising a body panel 14 having a front surface, a rear surface, an upper end, and a lower end; a first clip member 70 extending away from the rear surface; a second clip member 60 extending away from the rear surface, the second clip member being spaced from the first clip member, wherein the second clip member includes a stem 62; an upwardly extending arm 67 located adjacent a distal end of the stem; and, a downwardly extending arm 130 disposed adjacent the distal end of the stem; and, a cover panel 20 connected to the body panel, the cover panel having a front surface, a rear surface, an upper end, and a lower end; the first and the second clip members cooperate to selectively hold a projecting portion 56 of an associated shelf. However, Brinkman does not disclose a sign gripping member attached to the cover panel. Kump teaches that it was known in the art to attach a sign gripping member to the cover panel of a label holder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach a sign gripping member to the cover panel of the label holder disclosed by Brinkman, as taught by Kump, in order to hold a sign that is too big to fit behind the cover panel.

Regarding claim 46, the lower-most fin on the cover panel constitutes a ridge.

14. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brinkman (5,899,011) in view of Wildrick (6,470,613).

Brinkman discloses the invention substantially as claimed, as set forth above. However, the first gripping member 70 includes a first portion oriented generally perpendicular to the rear panel, a second portion connected to the first portion and oriented generally parallel to the rear

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panel, and then another portion oriented generally perpendicular to the rear panel, but does not include a third portion that extends toward the rear panel and a fourth portion that is oriented generally parallel to the rear panel. Such portions would have the effect of causing the first gripping member to curve more toward the rear panel, thus putting more pressure on the shelf to which the gripping member is attached. See Fig. 1 of Wildrick. Wildrick teaches that it was known in the art to provide a gripping member having a first portion oriented generally perpendicular to the rear panel, a second portion connected to the first portion and oriented generally parallel to the rear panel, a third portion extending toward the rear panel, a fourth portion oriented generally parallel to the rear panel (i.e., a portion of the upper curve is momentarily parallel to the rear panel), and a fifth portion oriented generally perpendicular to the rear panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the label holder disclosed by Brinkman with a gripping member of the type taught by Wildrick, in order to put more pressure on the shelf and thereby to grip it more firmly.

Conclusion

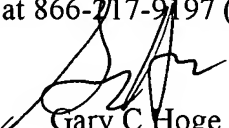
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-~~217-9197~~ 9197 (toll-free).



Gary C Hoge
Primary Examiner
Art Unit 3611

gch